

Appl. No. 10/090,377
Atty. Docket No. G-290 (CP-1241)
Amdt. Dated June 18, 2004
Reply to Office Action of February 20, 2004
Customer No. 27752

Remarks

Claims 1-18 are pending in the present application. No additional claims fee is due.

Response to the Office Action

The Rejection under 35 U.S.C. 103(a) over Claussen in view of Rose

Claims 1-18 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Claussen et al (U.S. Pat. No. 5,061,289 – hereinafter “Claussen”) in view of Rose et al (U.S. Pat. No. 4,900,325 – hereinafter “Rose”). Applicants respectfully traverse this rejection, as the Claussen and Rose references do not establish a *prima facie* case of obviousness. Specifically, there is no motivation to combine the references, as required under MPEP 2143.01. Therefore, a *prima facie* case of obviousness has not been established.

Claussen et al disclose diaminopyrazole based compounds as suitable developer components for hair dye formulations. The use of a developer component in an oxidative hair dye composition requires the presence of a suitable coupler compound to achieve the desired performance. Claussen discloses a number of conventional coupler materials as suitable for use in conjunction with the diaminopyrazole developers of their invention including the material m-phenylenediamine. Rose et al disclose hair dye compositions that employ specific couplers of the aminophenylamine type. Rose discloses a formula that when a specific combination of R groups are chosen, the material which results falls within the Formula I set forth in Applicants claims. Rose further describes these couplers as being particularly suitable for use in combination with a specific class of developer, the 2,4,5,6 – tetraaminopyrimidine type.

It is asserted in the Office Action that as Claussen discloses the genus m-phenylenediamine as a coupler, it would be obvious to use any of the aminophenylamine couplers disclosed by Rose in combination with Claussen. Contrary to the assertion, the Office Action has failed to establish a *prima facie* case of obviousness in the combination of Claussen and Rose. Claussen teaches a laundry list of common couplers in the industry, one of the couplers being the material m-phenylenediamine. However, Claussen has not disclosed a genus of phenylenediamine materials. Rather, Claussen has clearly disclosed the sole compound and extremely common coupler m-phenylenediamine. This material itself is sold under several different Trade names and is employed in the hair dye industry as a coupler. However, a teaching of this single compound by Claussen is not sufficient to suggest the use of the entire genus. Nowhere in the disclosure of Claussen, is it suggested that substituted phenylenediamines may be employed. Thus, Claussen is clearly not teaching one of ordinary skill in the art to use an entire

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class of materials. This is reinforced by the fact that Claussen recites a list of couplers all of which are individual components, not classes of materials. When referring to broad classes of materials, Claussen employed broader language in the plural such as "aromatic nitro dyes such as" in Col. 2, line 64. Thus, it is quite clear to one of ordinary skill in the art that Claussen was referring simply to the solitary compound m-phenylenediamine and was not enabling an entire genus of materials.

With that understanding, there is no motivation to combine the teachings of Rose with those of Claussen to arrive at Applicants claimed invention. Rose discloses substituted aminodiphenylamine couplers which are particularly suitable for use with developers in the class tetraaminopyrimidine. In fact, Rose fails to disclose or teach any pyrazole based developers as described in Claussen. And given the well established unpredictability of the art in combining couplers and developers, and the incredible array of possible combinations set forth in the art as a whole, it is simply not possible to have a reasonable expectation of success in combining Rose and Claussen without some specific teaching of the combination of pyrazole developers and substituted aminodiphenylamine couplers. Accordingly, Applicants claims 1-18 are novel and unobvious over the asserted combination of Claussen and Rose.

Conclusion

Applicants have made an earnest effort to distinguish the present invention from the applied references. WHEREFORE, Applicants respectfully request reconsideration of this application and allowance of Claims 1-18.

Respectfully submitted,

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